APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

CANTON POULTRY, INC., GEORGIA BROILERS CORPORATION, COTTON PRODUCERS ASSOCIATION, d/b/a GOLDKIST POULTRY GROWERS, INC., and TIP TOP POULTRY, INC., Plaintiffs,

vs.

DOYLE CONNER, COMMISSIONER OF AGRICULTURE OF THE STATE OF FLORIDA, Defendant.

Tallahassee Civil Action No. 1033

Before JONES, Circuit Judge, and CARSWELL and McRAE, District Judges:

CARSWELL, District Judge:

Findings of Fact and Conclusions of Law

Plaintiffs, Georgia poultry processors, brought this action against the Florida Commissioner of Agriculture to restrain the enforcement of certain provisions of Chapter 583, Florida Statutes, relating to the inspection, grading and tagging of poultry products within the State of Florida[1] and the rules and regulations promulgated thereunder.[2]

1. Fla. Stat. §§ 583.13, 583.14, 583.17-583.20 (1961).

2. Florida Administrative Code, Rules of the Department of Agriculture, Chapter 7E-7.02, .05, .06, .09.

This Court was convened in accordance with the provisions of 7 U. S. C. 1621, et seq.; 21 U. S. C. 451, et seq.; and 28 U. S. C. 2281, et seq.

Plaintiffs contend that the subject Florida laws and regulations are unconstitutional as applied to them because: (1) they unduly burden interstate commerce; (2) the federal law has preempted the field of poultry inspection and regulation; and (3) its application to plaintiffs denies them equal protection of the laws in violation of the 14th Amendment.

FINDINGS OF FACT

The plaintiffs are owners and operators of establishments which process poultry for transportation and sale in interstate commerce, much of it within the State of Florida. Poultry is inspected in these plaintiffs' establishments before interstate shipment by United States Department of Agriculture inspectors pursuant to the Federal Poultry and Poultry Products Inspection Act[3] and the rules and regulations promulgated thereunder.[4] The Florida statutes, together with its rules and regulations, provide for the inspection, grading and tagging of poultry products sold within the State of Florida and authorize the collection of an inspection fee to defray the expenses of administering the statute. The inspection fee is payable to the first person to sell, offer for sale, or hold for the purpose of sale in Florida any dressed poultry on which the inspection fee has not been paid.[5]

The Florida law also provides for the grading of poultry according to standards of quality as established

3. 21 U.S.C. §§ 451-469 (1957).
4. 7 CFR §§ 70.1-81.207.
5. Fla. Stat. § 583.18(4) (1961).

by the Act.[6] The evidence presented on trial shows that a thorough federal inspection of plaintiffs' poultry for wholesomeness is made at plaintiffs' establishments outside Florida. The evidence also shows, however, that there is only very limited federal inspection of poultry shipped into the State of Florida. It was established here that there are only three United States regulatory inspectors charged with the responsibility of checking some 9,913 retail stores and some 200 wholesale outlets in Florida. Moreover, one of these three men must perform some duties in six other southeastern states, averaging about ten weeks a year in Florida. Another federal inspector, the record shows, is actually assigned to the southwestern Georgia area and only rarely performs inspection work in Florida. The remaining federal inspector does devote virtually all of his time to his official duties within Florida, but can only cover a small percent of Florida outlets for poultry.

Any poultry in Florida discovered by the federal inspector to be contaminated must actually be removed from public sale by a stop sale order issued under the provisions of the Florida poultry law.[7] The federal inspector makes application to the State Commissioner's office for this authority.

The extent of inspections made by Florida personnel is in strong contrast to the limited volume of regulatory inspection made by the United States Department of Agriculture. During 1964 there were 42,254 regulatory inspections made at nearly all of the retail and wholesale outlets which distribute poultry in Florida. This regulatory inspection work was carried on by 46 inspectors, all of whom are State of Florida personnel and all of whom have

6. Fla. Stat. § 583.17 (1961).
7. Fla. Stat. § 583.18(2) (1961).

the individual authority to issue stop sale orders on any poultry products they find to be unwholesome. The Florida Department of Agriculture condemned approximately 76,800 pounds of poultry as unfit for human consumption between July 1, 1963, and January 1, 1965. Significantly, approximately one-half of this condemned poultry had been previously inspected by inspectors of the United States Department of Agriculture and shipped from without the State of Florida. The evidence shows that about 90% of Florida processed poultry is for intrastate consumption, and, therefore, does not have federal inspection for wholesomeness.

CONCLUSIONS OF LAW

Plaintiffs first contend that the Florida poultry law is unconstitutional as an undue burden on interstate commerce. We disagree.

We note at the outset that the Florida law operates after the product has completed its interstate journey and has lost its character as interstate commerce. The police power of the state is therefore exerted after the product acquires its character as intrastate commerce.[8]

The Florida law provides for the inspection, grading and tagging of poultry products sold within the state. A state may adopt measures for the health and safety of its people although commerce may incidentally be involved. See *Sligh* v. *Kirkwood*, 237 U. S. 52 (1915).

About 38,000 pounds of federally inspected poultry shipped into Florida over an eighteen months period was subsequently condemned by the State. In light of this finding, it cannot seriously be contended that the Florida law is not protective of the health and safety of the State.

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8. Fla. Stat. § 583.16 (1961).

State legislation, based on police power, which does not discriminate against interstate commerce is not is not in conflict with the Commerce Clause. See *Huron Portland Cement Co.* v. *City of Detroit*, 362 U. S. 440, 80 S. Ct. 813, 4 L. Ed. 2d 852. The state act is applied to locally produced poultry offered for sale in Florida as well as poultry shipped into the State. Any burden which might result from compliance with the state law rests equally upon the local distributors, and is therefore nondiscriminatory.

It is the second contention of plaintiffs that Congress, by passage of the Federal Poultry and Poultry Products Inspection Act has preempted the regulation of poultry so as to exclude poultry regulation by Florida.

The facts are persuasively to the contrary. Moreover, the federal poultry act is primarily designed to prevent the entry of contaminated poultry into the stream of interstate commerce. This is insured by the extensive federal poultry inspection at the plaintiffs' warehouses before interstate shipment. The Florida law, however, regulates the same product at the other end of the stream of commerce in the same manner in which it regulates similar products which are solely intrastate in character. The Supreme Court held in *Florida Lime & Avocado Growers* v. *Paul*, 373 U. S. 132, 83 S. Ct. 1210, 10 L. Ed. 2d 248, that "Congressional regulation of one end of the stream of commerce does not, ipso facto, oust all state regulation at the other end. . . ." See also *Swift* v. *Wickham*, 230 F. Supp. 398 (S. D. N. Y. 1964), wherein it was held that the federal poultry law did not preempt weight and labeling regulations promulgated under New York's Agricultural Markets Act.

We also note here in consideration of all of plaintiffs' arguments the highly perishable character of poultry prod-

ucts, the geography of the area which requires out of state poultry shipments into Florida to move considerable distances, especially to metropolitan areas at the southern extremity of the peninsula, and particularly the fact that federal inspection is patently insufficient to protect the well being of the poultry consuming public within the State of Florida.

Finally, we cannot say that plaintiffs have been denied the equal protection of the law as assured by the Constitution. The Florida poultry law as applied to these plaintiffs is not arbitrary or unreasonable. See *Allied Stores of Ohio* v. *Bowers*, 358 U. S. 522, 79 S. Ct. 437, 3 L. Ed. 2d 480. Upon this record we find plaintiffs' contention that their compliance with both federal and state poultry laws works to their economic disadvantage, although plaintiffs concede that Florida processors who ship only in intrastate commerce are also subject to the same tax and tagging provisions.

Accordingly, judgment is entered for defendant.

DATED this 25th day of January 1967.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CANTON POULTRY, INC., GEORGIA BROILERS CORPORATION, COTTON PRODUCERS ASSOCIATION, d/b/a GOLDKIST POULTRY GROWERS, INC., and TIP TOP POULTRY, INC.,
Plaintiffs,
vs.
DOYLE CONNER, COMMISSIONER OF AGRICULTURE OF THE STATE OF FLORIDA,
Defendant.

Tallahassee Civil Action No. 1033

Final Judgment

(Filed February 10, 1967)

In accordance with findings of fact and conclusions of law entered this date and the Court having determined therein that judgment should be entered in behalf of the defendant and against the plaintiff, it is, therefore, hereby

ORDERED that judgment be and it is hereby entered for the defendant and against the plaintiff with costs to be taxed against the plaintiff by the Clerk of this Court in accordance with law.

DONE AND ORDERED this 9th day of February, 1967.

/s/ Warren L. Jones

Warren L. Jones
United States Circuit Judge

/s/ G. Harrold Carswell

G. Harrold Carswell
United States District Judge

/s/ Wm. A. McRae, Jr.

William A. McRae, Jr.
United States District Judge

APPENDIX B

Florida Poultry Law

CHAPTER 583

Florida Statutes, 1961

CLASSIFICATION AND SALE OF POULTRY

583.01 *Definitions.*—In construing this chapter, where the context permits, the words, phrases, or term:

(1) "Commissioner" within the intent and purposes of this chapter shall mean the Florida commissioner of agriculture.

(13) "Dealer" in poultry shall mean any person, firm or corporation, including processors and retailers, engaged

in the business of selling, offering for sale or holding for the purpose of sale in this state any dressed poultry in excess of one hundred pounds in any one week, that are free from disease.

(14) "Broker" shall mean any person, firm or corporation who sells dressed poultry in this state for a dealer on a commission basis.

(15) "Processor" shall mean any person, firm or corporation slaughtering and dressing poultry for commercial purposes.

(16) "Poultry" shall mean all kinds of poultry and shall include chickens, turkeys, ducks, guineas, geese, pigeons and other domesticated food birds.

583.04 *Promulgation of regulations.*—The commissioner of agriculture may make and promulgate such regulations as may be necessary to carry out the provisions of this chapter.

583.06 *Employment of assistants.*—The commissioner of agriculture may employ such assistants as are necessary to carry out and enforce the provisions of this chapter, such assistants to be paid out of the general inspection trust fund.

583.12 *Live and dressed poultry.*—Live and dressed poultry are classified as:

(1) Live poultry, construed to mean fowl, not diseased, to be slaughtered for human consumption.

(2) Florida dressed, construed to mean any fowl, free of disease, slaughtered and offered for sale in Florida, that have not been hard-chilled or frozen.

(3) Shipped (state of origin) dressed, construed to mean any fowl, free of disease, produced and slaughtered

outside of Florida, that have not been hard-chilled or frozen.

(4) Quick frozen, or frozen, construed to mean any fowl that have been processed, packed, sealed and frozen in strict conformity with accepted standards for quick freezing, or frozen, that have not developed any appearance of cold storage stock and show no evidence of deterioration from freezing.

(5) Storage (or cold storage) fowl, construed to mean all fowl free from disease and regardless of where slaughtered, that show evidence of deterioration from freezing or that which have been held at low temperature for sixty days or more.

583.13 *Dealers to mark slaughtered poultry as to grade.*—

(1) It is unlawful for any dealer or broker to sell, offer for sale, or hold for the purpose of sale in the state any slaughtered poultry without clearly imprinting thereon or attaching thereto a label or tag, not less than two inches in diameter on which shall be plainly and legibly printed the classification, grade and standard to which the same belong. Whenever shipped, fresh dressed or cold storage poultry are sold, offered for sale, or held for the purpose of sale packed in a container other than an air-tight container, such container shall have affixed a label, not less than two inches by four inches on which shall be plainly and legibly printed in letters not less than three-eighths inch in height, the classification, grade and standard to which the contents of such container belong.

(2) It is unlawful to offer poultry for sale in any newspaper advertisement, circular, radio, or other form of advertising without plainly designating in such adver-

tisement the classification, grade, and standard to which the poultry being offered for sale properly belong.

(3) It is unlawful for any person, firm or corporation to use dressed poultry in the preparation of food served to the public, or to hold dressed poultry for the purpose of such use, unless such dressed poultry has clearly imprinted thereon or attached thereto a label or tag, not less than two inches in diameter, on which shall be plainly and legibly printed the classification, grade and standard to which the same belong. Whenever shipped, fresh dressed or cold storage poultry are used in the preparation of food served to the public, or held for the purpose of such use, packed in a container other than an air-tight container, such container shall have affixed a label, not less than two inches by four inches on which shall be plainly and legibly printed in letters not less than three-eighths inch in height the classification, grade and standard to which the contents of such container belong.

583.14 *Certification of poultry dealers.*—It is unlawful to sell, offer for sale, or hold for the purpose of sale any poultry as a dealer or broker unless such person has obtained from the commissioner of agriculture a certificate authorizing such person to engage in the business of selling poultry in Florida. Such certificate shall be subject to revocation by the commissioner of agriculture for cause. All such certificates shall be permanent registration and effective until revoked; provided that all certificates heretofore or hereafter issued shall serve as valid certificates until replaced with permanent certificates by the commissioner of agriculture.

583.15 *Reports of poultry dealers.*—The commissioner of agriculture may require every dealer and broker granted a certificate and every person, firm or corporation, using

dressed poultry in the preparation of food served to the public on which inspection fee has not been previously paid to keep records of all purchases, sales, receipts or other transactions pertaining to the sale, purchase or use of dressed poultry and to mail to the office of the commissioner of agriculture at Tallahassee, duplicate copies of all invoices, or equivalent information, showing the consignor, the consignee, the quantity, source and classification of poultry included in each purchase or sale, or such other information as the commissioner may require; and the commissioner may prescribe the forms to be used to give such information.

583.16 *Interstate shipments exempt.*—This law shall not apply to any shipment of live or dressed poultry while the same constitutes a bona fide shipment in interstate commerce, but shall apply at the very instant when an interstate shipment comes to rest within the state and the police power may be asserted thereon, or whenever such interstate shipment loses its character as such.

583.17 *Grades and standards for fowls.*—The commissioner of agriculture may determine, establish and promulgate, from time to time reasonable grades and standards of quality as to each or all of the classifications for fowl to be sold or offered for sale in the state, such as will, in his judgment, promote honest and fair dealing in the interest of the consumer; and he may alter or modify such grades and standards of quality from time to time, as in his judgment honest and fair dealing in the interest of the consumer may require; provided, however, that the grades and standards of quality so fixed by the commissioner of agriculture shall be based upon requirements not exceeding the requirements necessary to meet the grades and standards of quality prescribed by the United States department of agriculture, or which may hereafter be pre-

scribed by such United States department of agriculture, and the tolerance to be allowed shall be the same as is allowed in each grade or standard of quality by the United States department of agriculture.

The commissioner of agriculture may also make and promulgate such regulations as may be necessary to carry out the provisions of this law.

583.18 *Inspection by commissioner.*—The commissioner of agriculture, his inspectors or agents, in carrying out the provisions of this law:

(1) (a) May enter on any business day during the usual hours of business, any store, market or other building or place where poultry is sold, offered for sale, or held for the purpose of sale, in order to ascertain by inspection whether in the exhibition of such poultry all of the provisions and conditions of this chapter or any rule or regulation duly promulgated in relation to the sale, offering for sale, or holding for the purpose of sale have been complied with.

(b) May upon good and sufficient cause to believe that any of the provisions of this law are being violated, stop and inspect any truck or other vehicle engaged in the transportation of poultry upon the highway, to be sold, offered for sale, or held for the purpose of sale in Florida, and to make such examination or inspection thereof as is necessary to ascertain whether all of the provisions of this chapter or any rule or regulation duly promulgated thereunder relating to the quality and wholesomeness, grade and standard required by the provisions of this law have been complied with.

(2) May issue and enforce a stop sale notice or order, or a stop use notice or order, to the owner or custodian

of any lot of poultry which the commissioner or his inspectors or agents find, or have good reason to believe, are in violation of any of the provisions of this law or any regulation issued hereunder, which shall prohibit further sale, barter, exchange, distribution or use of such poultry until the commissioner of agriculture is satisfied that the law or regulation has been complied with and has issued a written release or notice to the owner or custodian of such poultry.

(3) May enter on any business day during the usual hours of business any restaurant kitchen, hotel dining room kitchen, or the kitchen of any other public eating place where dressed poultry is used in the preparation of food served to the public, and to make such examination and inspection thereof as is necessary to ascertain whether all of the provisions of this chapter or any rule or regulation duly promulgated thereunder relating to the quality and wholesomeness, grade and standard required by the provisions of this law have been complied with.

(4) An inspection fee of not less than one-eighth of one cent per pound nor more than one-fourth of one cent per pound is hereby imposed, and shall be paid to the commissioner of agriculture on all dressed poultry sold by dealers in this state and on all dressed poultry used in the preparation of food served to the public, if the fee had not been previously paid, which said inspection fee shall be paid by the dealer who first sells, offers for sale or holds for the purpose of sale dressed poultry in this state or by any person, firm or corporation using dressed poultry in the preparation of food served to the public, on which inspection fee has not been previously paid.

It is unlawful for any dealer to sell, offer for sale or hold for the purpose of sale in this state any dressed

poultry on which said inspection fee shall not have been paid, and it is unlawful to use, or hold for the purpose of use, in this state any dressed poultry in the preparation of food served to the public on which said inspection fee shall not have been paid. The manner of collection of such inspection fee shall be as prescribed by the commissioner of agriculture who is hereby authorized to so prescribe and enforce the method and manner of collecting same. All such fees so collected shall be paid into and become a part of the general inspection trust fund of the state.

(5) The possession of more than one hundred pounds of dressed poultry in any one week by any dealer or broker or any person, firm or corporation using dressed poultry in the preparation of food served to the public, shall be deemed held for the purpose of sale or for the purpose of use in the preparation of food served to the public.

538.19. *Sale of unsound, etc., fowls prohibited.*—It is unlawful for any person to sell fowl, live or dressed, which is unsound, unhealthful, unwholesome, diseased or otherwise unfit for human consumption.

583.20 *Penalties for violations of chapter.*—

(1) Any person violating any provision of this chapter, or any rule or regulation promulgated by the commissioner of agriculture within this chapter, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned in the county jail for not more than ninety days or shall be fined in a sum not less than fifty dollars nor more than two hundred dollars. In addition thereto, the commissioner may revoke the certificate of any dealer convicted of any violation of this chapter.

(2) In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the commissioner of agriculture is hereby authorized to apply by a bill in equity to a circuit court or circuit judge and such circuit court or circuit judge shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of §§ 583.01, 583.05, 583.09, 583.12, 583.14, 583.18, 583.20 or from failing or refusing to comply with the requirements of said §§ 583.01, 583.05, 583.09, 583.12, 583.14, 583.18, 583.20 or any rule or regulation duly promulgated as in § 583.04 authorized. Such injunction shall be issued without bond.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

CANTON POULTRY, INC. ET AL. *v.* CONNER.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA.

No. 1315. Decided June 12, 1967.

PER CURIAM.

The judgment is vacated and the case remanded to the District Court so that it may enter a fresh decree from which a timely appeal may be taken to the Court of Appeals. *Pennsylvania Public Utility Comm'n* v. *Pennsylvania R. Co.*, 382 U. S. 281, 282.